

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs August 5, 2009

IN RE S.A.C. AND S.M.S.C.

**Appeal from the Juvenile Court for Warren County
No. 4555 Larry G. Ross, Judge**

No. M2009-00532-COA-R3-PT - Filed September 30, 2009

Mother and Father appeal from a juvenile court order terminating their parental rights to their two children. Finding clear and convincing evidence to support the juvenile court's determination, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Affirmed

ANDY D. BENNETT, J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, P.J., M.S., and RICHARD H. DINKINS, J., joined.

Phillip Terry Clemons, McMinnville, Tennessee, for the appellant, J.C.B.C.; and Matthew David Edwards, Sparta, Tennessee, for the appellant, T.B.C.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; and Elizabeth C. Driver, Assistant Attorney General; for the appellee, State of Tennessee Department of Children's Services.

Rachel Hoover Kirby, Nashville, Tennessee, Guardian Ad Litem.

OPINION

FACTUAL AND PROCEDURAL BACKGROUND

S.A.C., a boy, was born in July 1998 to J.S.B.C. ("Mother") and T.B.C. ("Father").¹ S.M.S.C., a girl, was born in November 2006 to Mother and Father. The Department of Children's Services ("DCS") first became involved with this family on March 9, 2007, when police entered Mother's home to serve a warrant on a visitor and discovered a methamphetamine lab operating in the home. Mother consented to a drug screen, tested positive for methamphetamine, marijuana, and

¹ Mother and Father were married at the time and remained married at the date of these proceedings, despite living apart.

cocaine, and admitted to taking pills not prescribed for her. Mother was arrested for providing a residence for the manufacture of methamphetamine and was charged with child neglect. She later pled guilty to promoting the manufacture of methamphetamine. The children were placed in the custody of DCS on March 9, 2007. The Petition to Terminate Parental Rights was filed by DCS on September 25, 2008.

On March 30, 2007, DCS implemented permanency plans for S.A.C. and S.M.S.C. with the goal of parental reunification. Father resided in Indiana at the time, and his only responsibility under the plan was to cooperate with the process to become an approved placement option through the Interstate Compact on the Placement of Children. Mother's responsibilities under the plan were to (1) obtain an alcohol and drug assessment and follow all recommendations; (2) not associate with known drug users or allow any in her home; (3) submit to random, periodic drug screens; (4) obtain a parenting assessment and follow all recommendations; (5) obtain a legal source of income in an amount sufficient to provide for her children's basic needs; (6) maintain a home free of safety hazards and with working utilities; (7) not entertain overnight guests without prior DCS approval; and (8) resolve all legal issues, pay fines, and comply with probation. Mother and Father signed the permanency plan and the criteria explaining termination of parental rights on April 18 and April 23, 2007, respectively.

After her release from jail for the promotion of methamphetamine, Mother failed a drug test administered by DCS on March 26, 2007. DCS arranged an alcohol and drug assessment for Mother with Bradford Health Services, which recommended that she participate in intensive outpatient drug and alcohol treatment. Mother refused to participate in Bradford's program because she wanted inpatient treatment. DCS consequently scheduled an appointment for Mother with Centerstone for drug treatment. On May 8, 2007, however, before her scheduled appointment with Centerstone, Mother was arrested when police again attempted to serve a warrant on a visitor at her home and again found methamphetamine. Mother pled guilty to promoting the manufacture of methamphetamine.

Upon her release, Mother completed drug treatment at Bradford in January and February of 2008. In March 2008, Mother again tested positive for marijuana and methamphetamine. She was sentenced to a total of seven years in prison on two separate convictions for promoting the manufacture of methamphetamine. Mother was incarcerated from April 1 to July 18, 2008, when she was allowed to transfer to the Davidson County Drug Court Residential Program where she remained at the time of these proceedings in February 2009.²

Father was incarcerated in Indiana at the time the children entered DCS custody. As stipulated in the permanency plan, DCS arranged for the Indiana child welfare agency to investigate Father's

² The Davidson County Drug Court Residential Program is a long-term residential drug and alcohol treatment facility that operates under the direct supervision of the Division IV Criminal Court in the 20th Judicial District of Tennessee. It was unclear at trial how much longer Mother would need to remain in the Drug Court program. Mother estimated at trial that she would spend another eight months in the residential program before re-entry. If she were to leave the program, her only alternative would be to serve out the remainder of her seven-year sentence.

circumstances, and he was eventually approved as a placement option for S.A.C. and S.M.S.C. Father traveled to Indiana with the children on July 17, 2007, with the understanding that he was to maintain regular contact with DCS as the children were still in state custody.³ Nancy Geist, the DCS family service worker assigned to S.A.C. and S.M.S.C., had not heard from Father by August 2, 2007, and could not reach him by telephone. On August 31, 2007, Father's landlord called Ms. Geist and notified her that Father had not paid his rent, had quit his job, and was living in a filthy apartment. S.A.C. and S.M.S.C. were eventually found living with Father's mother and brother at the mother's house. On September 3, 2007, DCS personnel drove to Indiana and recovered the children.

DCS revised the permanency plans for S.A.C. and S.M.S.C. on November 29, 2007, with the stated goals of reuniting them with their parents or placing them with a relative. Mother's responsibilities under the new plan remained substantially unchanged. Father was required to (1) get an alcohol and drug assessment and follow all recommendations; (2) sign releases necessary for DCS to receive information from service providers; (3) not associate with known drug users or allow them into his home or around the children; (4) submit to random drug screens; (5) obtain a parenting assessment and follow all recommendations; (6) provide appropriate supervision and not leave the children with other caretakers without prior DCS approval; (7) obtain a legal means of income; and (8) maintain a home free of safety hazards. Mother signed the revised plan and the criteria for termination of parental rights on November 29, 2007. Father did not sign this plan but did sign a later revised plan with substantially the same responsibilities on May 14, 2008.

In December 2007, Father was arrested in Tennessee, convicted for possession of a schedule I narcotic, and incarcerated until April 16, 2008. Upon his release, Father stayed at the homeless shelter at the Cookeville Rescue Mission. During this time, Ms. Geist arranged for Father to visit S.A.C. and S.M.S.C. several times. Father successfully completed the Mission's thirty-day drug addiction program. He returned to Indiana on May 19, 2008, and remained there until August when he realized that DCS would not let the children return to him there. Upon his return to Tennessee, Father lived in a tent for approximately a month until he moved in with his girlfriend, Christy Cook.

At the time of trial, Father and Ms. Cook had lived together for approximately six months, during which time the police had been called on several occasions for domestic disputes. Father was arrested the first time on allegations that he hit Ms. Cook in the face. Ms. Cook denied this at trial in an explanation that the trial court found totally incredible. According to Ms. Cook, she and Father intended to move back to Indiana if S.A.C. and S.M.S.C. were returned to him.

While the children were in foster care, Father failed to complete the drug and alcohol treatment that DCS had arranged through Bradford. Some of Father's classes at Bradford conflicted with his visits with S.A.C. and S.M.S.C. Ms. Geist explained to Father a way to finish all but two of the treatment sessions that he needed. At the time of trial, however, Father lacked five or six

³ Father did not have a valid driver's license so his friend and landlord drove him to Tennessee to pick up the children. According to Father, the group was involved in a serious car accident on the return trip to Indiana. Father allegedly lost his job as a result of his injuries.

classes to complete his twelve-session program. Father also refused to take drug tests, allegedly on the advice of his attorney. Ms. Geist also tried to arrange other services in Indiana for Father, but his frequent moves made it difficult. He did participate in a parenting assessment and attend parenting classes.

Meanwhile, S.A.C. and S.M.S.C. remained in foster care with the same foster parents the entire time they were in DCS custody, except for the six weeks that the children lived with Father and his family in Indiana. According to Ms. Geist, the children were healthy and thriving in the foster parents' care. The foster parents wished to adopt both children.

The Juvenile Court terminated both Father's and Mother's parental rights on three grounds pursuant to Tenn. Code Ann. § 36-1-113(g): abandonment, substantial noncompliance with the permanency plans, and persistent unremedied conditions that prevent the children's return to their parents. The court also concluded that termination of both parents' rights was in the best interest of S.A.C. and S.M.S.C. The court, therefore, ordered that complete custody, control, and guardianship of S.A.C. and S.M.S.C. be awarded to DCS with the right to place the children for adoption.

STANDARDS FOR TERMINATION OF PARENTAL RIGHTS

A parent has a fundamental right to the care, custody, and control of his or her child. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *Nash-Putnam v. McCloud*, 921 S.W.2d 170, 174 (Tenn. 1996). Thus, the state may interfere with parental rights only if there is a compelling state interest. *Nash-Putnam*, 921 S.W.2d at 174-75 (citing *Santosky v. Kramer*, 455 U.S. 745 (1982)). Terminating a person's parental rights "has the legal effect of reducing the parent to the role of a complete stranger." *In re W.B.*, IV, No. M2004-00999-COA-R3-PT, 2005 WL 1021618, at *6 (Tenn. Ct. App. Apr. 29, 2005). Pursuant to Tenn. Code Ann. § 36-1-113(l)(1), "[a]n order terminating parental rights shall have the effect of severing forever all legal rights and obligations of the parent or guardian of the child against whom the order of termination is entered and of the child who is the subject of the petition to that parent or guardian."

Our termination statutes identify "those situations in which the state's interest in the welfare of a child justifies interference with a parent's constitutional rights by setting forth grounds on which termination proceedings can be brought." *In re W.B.*, 2005 WL 1021618, at *7 (citing Tenn. Code Ann. § 36-1-113(g)). To support the termination of parental rights, petitioners must prove both the existence of one of the statutory grounds for termination and that termination is in the child's best interest. Tenn. Code Ann. § 36-1-113(c); *In re D.L.B.*, 118 S.W.3d 360, 367 (Tenn. 2003); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002).

Because of the fundamental nature of the parent's rights and the grave consequences of the termination of those rights, courts must require a higher standard of proof in deciding termination cases. *Santosky*, 455 U.S. at 769; *Matter of M.W.A., Jr.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998). Thus, both the grounds for termination and the best interest inquiry must be established by clear and

convincing evidence. Tenn. Code. Ann. § 36-1-113(c)(1); *In re Valentine*, 79 S.W.3d at 546. Clear and convincing evidence “establishes that the truth of the facts asserted is highly probable, and eliminates any serious or substantial doubt about the correctness of the conclusions drawn from the evidence.” *In re M.J.B.*, 140 S.W.3d 643, 653 (Tenn. Ct. App. 2004) (citations omitted). Such evidence “produces in a fact-finder’s mind a firm belief or conviction regarding the truth of the facts sought to be established.” *Id.*

In light of the heightened standard of proof in these cases, a reviewing court must adapt the customary standard of review set forth by Tenn. R. App. P. 13(d). *Id.* at 654. As to the trial court’s findings of fact, our review is de novo with a presumption of correctness unless the evidence preponderates otherwise, in accordance with Tenn. R. App. P. 13(d). *Id.* We must then determine whether the facts, as found by the trial court or as supported by the preponderance of the evidence, clearly and convincingly establish the elements necessary to terminate parental rights. *Id.*

ANALYSIS

A party seeking the termination of parental rights must prove two elements by clear and convincing evidence: the existence of one of the statutory grounds for termination and that termination is in the child’s best interest. *In re M.L.P.*, 281 S.W.3d 387, 392 (Tenn. 2009); *In re Valentine*, 79 S.W.3d at 546; Tenn. Code Ann. § 36-1-113(c). In the present case, we have concluded that the petitioners clearly and convincingly proved both the statutory grounds and that termination is in the best interest of the children.

Statutory Grounds for Termination

A trial court is only required to find one statutory ground in order to terminate parental rights. *In re D.L.B.*, 118 S.W.3d at 367. At the conclusion of proof in the present case, the trial court ordered that both Father’s and Mother’s parental rights be terminated on three statutory grounds pursuant to Tenn. Code Ann. § 36-1-113(g): abandonment, substantial noncompliance with the permanency plans, and the existence of conditions that prevent the return of the children.

Father

The trial court first found that Father abandoned S.A.C. and S.M.S.C. pursuant to Tenn. Code Ann. § 36-1-113(g)(1). The final decree specifically refers to abandonment as defined in Tenn. Code Ann. § 36-1-102(1)(A)(i):

For a period of four (4) consecutive months immediately preceding the filing of a proceeding or pleading to terminate the parental rights of the parent(s) or guardian(s) of the child who is the subject of the petition for termination of parental rights or adoption, that the parent(s) or guardian(s) either have willfully failed to visit or have willfully failed to support or have willfully failed to make reasonable payments toward the support of the child.

The only evidence that Father offers to refute the trial court's finding of abandonment is that he visited and called S.A.C. and S.M.S.C. during the time that they were in DCS custody. However, the trial court found that Father willfully failed to have more than token visitation with his children in the four months preceding the September 25, 2008 petition to terminate. "Token visitation" for purposes of Tenn. Code Ann. § 36-1-102(1) is defined as "nothing more than perfunctory visitation or visitation of such an infrequent nature or of such short duration as to merely establish minimal or insubstantial contact with the child." Tenn. Code Ann. § 36-1-102(1)(C).

Father's conduct in failing to visit S.A.C. and S.M.S.C. was willful. A person acts "willfully" when "he or she is a free agent, knows what he or she is doing, and intends to do what he or she is doing." *In re Audrey S.*, 182 S.W.3d 838, 864 (Tenn. Ct. App. 2005). A parent's failure to visit or support is deemed "willful" when "that parent knows he or she has a duty to visit or support, has the ability to visit or support, makes no attempt to visit or support, and has no justifiable excuse for not visiting or supporting the child." *In re Adoption of T.Z.T.*, No. M2007-00273-COA-R3-PT, 2007 WL 3444716, at *3 (Tenn. Ct. App. Nov. 15, 2007) (citing *In re Audrey S.*, 182 S.W.3d at 864). In the present case, the relevant time period for determining abandonment was May 25 through September 25, 2008. Father visited S.A.C. and S.M.S.C. two or three times in May 2008 and then moved to Indiana where he remained until late September. Father knew he had a duty to visit S.A.C. and S.M.S.C. and made no attempt to do so in the four months preceding the filing of the petition.

The trial court also found that Father failed to substantially comply with the provisions of the permanency plan pursuant to Tenn. Code Ann. § 36-1-113(g)(2). Father completed only five or six of the twelve drug and alcohol classes that DCS arranged through Bradford and refused random drug screens. He was arrested in December 2007 for possession of morphine and heroin. He failed to maintain a legal source of income or suitable housing, having lived alternately at a homeless shelter, a tent, his girlfriend's home, and his mother's home during the twenty-three-month period that S.A.C. and S.M.S.C. were in state custody. Father contends only that he rented a home in Gainesboro, Tennessee, for six months prior to trial and made all of the rent payments on time. This factor alone does not negate Father's substantial noncompliance with his other obligations under the permanency plan.

Finally, the trial court found that, pursuant to Tenn. Code Ann. § 36-1-113(g)(3), conditions still existed that prevented the return of the children to Father. Father continued his criminal activity, had not completed drug treatment, and did not have a stable home. Father was living with a girlfriend who initiated domestic violence charges against him. Father's girlfriend testified that if Father's parental rights were reinstated, they intended to return to Indiana with the children. The last time Father was approved as a placement for S.A.C. and S.M.S.C. in 2007 he took the children to Indiana, refused to stay in contact with DCS, and subjected the children to changes in schools and caretakers in a short six-week period.

The evidence does not preponderate against the trial court's findings. The evidence clearly and convincingly establishes the existence of the three statutory grounds found by the trial court for termination of Father's parental rights.

Mother

The trial court first found that Mother abandoned S.A.C. and S.M.S.C. pursuant to Tenn. Code Ann. §§ 36-1-113(g)(1) and 36-1-102(1)(A)(ii) in that she failed to make reasonable efforts to establish a suitable home in the first four months following removal of the children from the home of the parents. The trial court found that the petitioners complied with the statute in making reasonable efforts to assist Mother to establish a suitable home for her children, including arranging alcohol and drug treatment for her at Bradford, providing random drug screens, and offering information about a treatment program at Centerstone when Mother declined to attend Bradford. Instead, Mother refused to cooperate with Bradford's drug treatment recommendations from her alcohol and drug assessment, failed a drug screen, was evicted from her apartment, and was arrested for having items related to the manufacture of methamphetamine in her home.

The court found that Mother also abandoned S.A.C. and S.M.S.C. pursuant to Tenn. Code Ann. § 36-1-102(1)(A)(iv). This provision is satisfied if a parent is incarcerated at the time of the institution of an action to declare a child to be abandoned and the parent in the four months preceding incarceration willfully failed to visit, willfully failed to support, or willfully failed to make reasonable payments toward the support of the child. This provision is also satisfied if prior to incarceration, the parent engaged in conduct that exhibited a wanton disregard for the welfare of the child. The trial court found both that Mother willfully failed to provide more than token support in the four months preceding her incarceration and exhibited a wanton disregard for the welfare of her children.⁴

This court has “repeatedly held that probation violations, repeated incarceration, criminal behavior, substance abuse, and the failure to provide adequate support or supervision for a child can, alone or in combination, constitute conduct that exhibits a wanton disregard for the welfare of a child.” *In re Audrey S.*, 182 S.W.3d at 867-68. In the present case, Mother was incarcerated the majority of the time that S.A.C. and S.M.S.C. were in state custody. When she was not incarcerated, Mother tested positive for amphetamine, methamphetamine, and marijuana; admitted to using cocaine; and was arrested twice for supplying ingredients for the manufacture of methamphetamine in her home. The juvenile court did not err in finding that Mother's conduct prior to incarceration constituted a wanton disregard for the welfare of S.A.C. and S.M.S.C.

⁴ The relevant time period for determining whether Mother abandoned S.A.C. and S.M.S.C. was December 1, 2007, through April 1, 2008. DCS payment summaries from March 1, 2006, to February 23, 2009, indicate that Mother made a one-time payment of \$5.00 in child support on February 4, 2009. To explain her lack of support in the four months preceding incarceration, Mother claims that she was completing community service requirements and looking for a job. As previously noted, a parent's failure to visit or support is “willful” when “that parent knows he or she has a duty to visit or support, has the ability to visit or support, makes no attempt to visit or support, and has no justifiable excuse for not visiting or supporting the child.” *In re Adoption of T.Z.T.*, No. M2007-00273-COA-R3-PT, 2007 WL 3444716, at *3 (Tenn. Ct. App. Nov. 15, 2007) (citing *In re Audrey S.*, 182 S.W.3d at 864). Because Mother's behavior preceding incarceration constitutes wanton disregard for the welfare of the child, we need not address whether Mother's excuse in not supporting S.A.C. and S.M.S.C. is “justifiable.”

The trial court also found that Mother failed to substantially comply with the provisions of the permanency plan pursuant to Tenn. Code Ann. § 36-1-113(g)(2). She did not follow the recommended treatment from her alcohol and drug assessment; she failed to remain drug free, testing positive for methamphetamine on March 26, 2007, and for methamphetamine and marijuana on March 7, 2008; she did not obtain a legal source of income in an amount sufficient to provide for her children; she did not maintain suitable housing; she did not comply with her probation requirements; and she did not obtain a parenting assessment. Mother contends that she did substantially comply with the permanency plan by providing her children with food and shelter prior to her incarceration. Mother oversimplifies her responsibilities under the permanency plan, which actually required her to maintain a home free of safety hazards and to procure a legal source of income. It can hardly be said that the manufacture of methamphetamine constitutes a legal source of income or a safe home environment. Moreover, these requirements were only two of eight that Mother had to comply with under the permanency plan and would not constitute substantial compliance even had they been satisfied.

The trial court also concluded that conditions still existed that prevented the return of the children to Mother pursuant to Tenn. Code Ann. § 36-1-113(g)(3). Mother was confined to a court-mandated drug treatment facility, did not have a home for the children, did not have a job, had continued criminal activity, and had not demonstrated that she could remain drug free. Mother asserts that these conditions will be remedied upon her completion of the Drug Court program. It is unclear, however, how long this will take. By Mother's own estimation at trial, she would remain in the residential program for at least another eight months. She would then begin a lengthy re-entry process which includes the development of an aftercare plan and employment or vocational training. Thus, under the most ideal scenario, it could easily be another year before Mother is able to provide for her children. Additionally, during the nearly two-year period that S.A.C. and S.M.S.C. had been in state custody, Mother had been unable to change her behavior. In fact, she was arrested a second time for the manufacture of methamphetamine only two months after her children were initially removed. At this time, it is not possible to say Mother has changed her ways.

The evidence does not preponderate against the trial court's findings. The evidence clearly and convincingly establishes the existence of the three statutory grounds found by the trial court for termination of Mother's parental rights.

Children's Best Interest

DCS was also required to prove by clear and convincing evidence that termination "is in the best interest of the child[ren]." Tenn. Code Ann. § 36-1-113(c)(2); *In re Valentine*, 79 S.W.3d at 546. Tenn. Code Ann. § 36-1-113(i) lists factors to be considered by the court in making its best interest determination:

- (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;

- (2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;
- (3) Whether the parent or guardian has maintained regular visitation or other contact with the child;
- (4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;
- (5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;
- (6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;
- (7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;
- (8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or
- (9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

Ascertaining whether termination is in a child's best interest is necessarily a fact-intensive inquiry. *In re Giorgianna H.*, 205 S.W.3d 508, 523 (Tenn. Ct. App. 2006). Moreover, the best interest analysis "does not call for a rote examination of each of Tenn. Code Ann. § 36-1-113(i)'s nine factors and then a determination of whether the sum of the factors tips in favor of or against the parent." *In re Audrey S.*, 182 S.W.3d 838, 878 (Tenn. Ct. App. 2005). Rather, "[t]he relevancy and weight to be given each factor depends on the unique facts of each case." *Id.*

The trial court identified fifteen findings of fact to support its conclusion that termination of parental rights was in the children's best interest. The trial court stated that Mother and Father "have not made an adjustment of circumstances, conduct or conditions as to make it safe and in the children's best interest to return to the home of either of them." The court noted that the parents "have not made a lasting adjustment after 23 months of reasonable efforts by the Department of Children's Services and it does not appear that lasting adjustment is reasonably possible for them." The court pointed out that Father and Mother "continue to make lifestyle choices that prevent them

from being able to parent the children or provide a home for the children” and made special mention of criminal activity in their homes and their continued use of controlled substances.

Father

The only argument set forth by Father to refute the trial court’s best interest determination is that he has a bond with his children that he worked toward maintaining by visiting and calling them while they were in DCS custody. The trial court, however, found that Father maintained only token visitation with the children, had no meaningful relationship at all with S.M.S.C., and had shown little interest in the welfare of the children. During the period of time that the children were living with Father in Indiana, S.A.C. and S.M.S.C. were cared for by at least three different caretakers, and S.A.C. was enrolled in two different schools, all in less than two months’ time. Father failed to maintain the required contact with DCS, and the children were eventually found living at the home of Father’s mother. Significantly, the trial court observed that the children had developed a strong bond with their foster parents, with whom they had lived for nearly two years and who wished to adopt them. We agree with the trial court’s determination that the evidence clearly and convincingly establishes that termination of Father’s rights was in the best interest of S.A.C. and S.M.S.C.

Mother

Mother points to the fact that there was no expert testimony that termination would be in the best interest of the children or that the children would suffer substantial harm if Mother’s parental rights were not terminated. As noted, the best interest inquiry is fact intensive, and expert testimony is not a factor that must be given weight by the court. *See* Tenn. Code Ann. § 36-1-113(i). Furthermore, the trial court had the benefit of testimony from Nancy Geist, the DCS family service worker assigned to S.A.C. and S.M.S.C. since their removal on March 9, 2007. Ms. Geist testified that Father and Mother had not made an adjustment of circumstances or conduct that would allow safe return of the children to them. According to Ms. Geist, neither parent had a meaningful relationship with S.M.S.C., who was only three months old when she was removed. In Ms. Geist’s opinion, the children need permanency and had found it with the foster parents with whom they had resided since removal. Ms. Geist testified that a change in caretakers would be detrimental to the children.

Moreover, conditions still existed that prevented the return of the children to Mother. She remained in a court-mandated residential drug treatment facility and failed to demonstrate that she could remain drug free when not confined. Mother failed to make reasonable efforts to establish a suitable home for her children in the first four months following their removal. In fact, exactly two months after her children were removed, she was placed in jail again for manufacturing methamphetamine. We agree with the trial court’s determination that the evidence clearly and convincingly establishes that termination of Mother’s rights was in the best interest of S.A.C. and S.M.S.C.

The judgment of the trial court is affirmed. Costs of appeal are assessed against the appellants, for which execution may issue if necessary.

ANDY D. BENNETT, JUDGE